

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING
Rules I and II and amendment of)	ON PROPOSED ADOPTION,
37.62.101, 37.62.103, 37.62.106,)	AMENDMENT, AND REPEAL
37.62.108, 37.62.110, 37.62.111,)	
37.62.114, 37.62.118, 37.62.121,)	
37.62.123, 37.62.126, 37.62.128,)	
37.62.134, 37.62.136, 37.62.140,)	
37.62.148, and 37.62.2121, and the)	
repeal of ARM 37.62.130, 37.62.138,)	
and 37.62.146 pertaining to child)	
support guidelines)	

TO: All Interested Persons

1. On November 15, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, amendment, and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on November 6, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rules as proposed to be adopted provide as follows:

RULE I DETERMINATION OF PARENTING TIME (1) Each parent is responsible for a daily amount of child support whether or not the child lives with the parent. This obligation may not be met in its entirety if a parent's child support is determined under ARM 37.62.126 (minimum contribution). A child may also reside with a third party, who is treated as a parent for the purpose of receiving child support.

(2) The number of days a child spends with each parent or third party determines the portion of each parent's obligation that is retained and the portion that is owed to the other parent/party. For purposes of this rule, a "day" is defined as the majority of a 24-hour calendar period in which the child is with or under the control of a parent/party. The calendar period begins at midnight of the first day and ends at midnight of the second day. When the child is in the temporary care of a third party, such as in school or a day care facility, the parent who is the primary

contact for the third party is the parent who has control of the child for that period of time. If both parents are primary contacts, the parent with whom the child spends the night following the third party care, is the parent credited with that time period. This definition assumes there is a correlation between time spent and resources expended for the care of the child. Reference can be made to the residential schedule in the parenting plan ordered under 40-4-234, MCA.

(3) The number of days entered into the child support worksheet must be corroborated by a:

- (a) parenting plan; or
- (b) signed agreement between the parties; or
- (c) determination by a court.

(4) Absent one of the items in (3), 305 days are entered for the custodial parent and 60 days for the noncustodial parent, unless credible evidence is presented that would prove this unconscionable, such as one parent serving a period of time in prison or a parent having no relationship or performing no "parenting functions" (see 40-4-234(1), MCA) with respect to the child of the calculation. In such a case, enter "365" days into the support calculation for the parent/party with residential custody and "0" days for the other parent.

(5) If support is calculated for more than one child and the children spend varying amounts of time with each parent/party, as in the case where child A lives with mother for 275 days and father for 90 days, and child B lives with each parent for 182.5 days, the parenting time should be averaged for each parent/party. (Example: mother $275 + 182.5 = 457.5 \div 2 = 229$; father $90 + 182.5 = 272.5 \div 2 = 136$. Mother's entry is 229 days and father's entry is 136 days for a total of 365 days).

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

RULE II DETERMINATION OF INCOME FOR CHILD SUPPORT

(1) Parents are presumed to be capable of full time employment; full time employment is presumed to be no more than 40 hours per week and may be less depending upon the parent's profession, the employer's policies, or the industry standard in the parent's location. Income for child support includes actual income, imputed income, or any combination thereof which fairly reflects a parent's resources available for child support. Income can never be less than zero.

(2) Actual income includes:

(a) economic benefit from whatever source derived, except as excluded in (3), and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, earnings, profits, dividends, severance pay, pensions, periodic distributions from retirement plans, draws or advances against earnings, interest, trust income, annuities, royalties, alimony or spousal maintenance, social security benefits, veteran's benefits, workers' compensation benefits, unemployment benefits, disability payments, and all other government payments and benefits. A history of capital gains in excess of capital losses shall also be considered as income for child support;

(b) gross receipts minus reasonable and necessary documented expenses

required for the production of income for those parents who receive income or benefits as the result of an ownership interest in a business or who are self-employed. Straight line depreciation for vehicles, machinery, and other tangible assets may be deducted if the asset is required for the production of income. The party requesting such depreciation shall provide sufficient information to calculate the value and expected life of the asset. Internal Revenue Service rules apply to determine expected life of assets. Business expenses do not include deductions relating to personal expenses, or expenses not required for the production of income;

(c) the value of noncash benefits such as in-kind compensation, personal use of vehicle, housing, payment of personal expenses, food, utilities, etc.;

(d) grants, scholarships, third party contributions, and earned income received by parents engaged in a plan of economic self-improvement, including students. Financial subsidies or other payments intended to subsidize the parent's living expenses and not required to be repaid at some later date must be included in income for child support;

(e) allowances for expenses, flat rate payments or per diem received, except as offset by actual expenses. Actual expenses may be considered only to the extent a party can produce receipts or other acceptable documentation. Reimbursements of actual employment expenses may not be considered income for purposes of these rules.

(3) Income for child support does not include the federal earned income tax credit, the federal child tax credit, and the federal dependent care tax credit. Also not included are benefits received from means-tested veteran's benefits and means-tested public assistance programs including but not limited to cash assistance programs funded under the federal temporary assistance to needy families (TANF) block grant, supplemental security income (SSI), food stamps, and child support payments received from other sources. One time lump sum payments not anticipated to recur ordinarily are not considered income.

(4) Lump sum social security payments, or social security benefits, or other financial subsidy:

(a) received on behalf of a child of the calculation as the result of a parent's disability, (Title II, SSDI), is considered in accordance with ARM 37.62.144; or

(b) received on behalf of a child of the calculation as the result of that child's disability (Title XVI, SSI), is not included in a parent's income; or

(c) received on behalf of a child, whether or not of the calculation, is not included in a parent's income.

(5) To determine income for child support, income attributable to subsequent spouses, domestic associates, and other persons who are part of the parent's household is not considered. In an action to establish a child support order, income from current overtime or a second job is included in income for child support if it is reliable and expected to continue for the foreseeable future.

(6) In an action to modify a child support order, income from current overtime or second job is not included unless it was included in the original order for that family. If it cannot be determined that overtime or second job income was included in the original order, the current income from overtime or second job is not included in income for child support.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.62.101 AUTHORITY, POLICY, AND PURPOSE (1) These guidelines are promulgated under the authority of 40-5-209, MCA, for the purpose of establishing a standard to be used by the district courts, child support enforcement agencies, attorneys, and parents in determining child support obligations.

(2) These guidelines are based on the principle that it is the first priority of parents to meet the needs of the child according to the financial ability of the parents. In a dissolution of marriage or when parents have never been married, a child's standard of living should not, to the degree possible, be adversely affected because a child's parents are not living in the same household.

(3) These guidelines are structured to determine annual child support ~~on an annual basis~~ based on circumstances at the time of the calculation. Payment will be made in equal monthly installments.

(4) As required by 40-4-204, 40-5-226, and 40-6-116, MCA, these guidelines apply to contested, noncontested, and default proceedings to establish or modify support orders.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.103 DEFINITIONS For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Actual income" is defined in ~~ARM 37.62.106~~ [Rule II].

(2) "CSED" means the Child Support Enforcement Division of the Department of Public Health and Human Services.

(3) "Department" means the Department of Public Health and Human Services.

(4) "Federal poverty index guidelines" means the ~~minimum amount of income needed for subsistence~~ guidelines published by the U.S. Department of Health and Human Services under the authority of 42 USC 9902(2), which will be updated periodically in the Federal Register. Such updates will be adopted by amendment to these rules as appropriate. The amount is developed by the U.S. office of management and budget, revised annually in accordance with 42 USC 9902, and published annually in the federal register.

(5) "Guidelines" means the administrative rules for establishment of child support as provided in ARM Title 37, chapter 62, subchapter 1, as promulgated in 40-5-209, MCA.

(6) "Imputed income" is defined in ~~ARM 37.62.106~~ as income not actually earned but which is attributed to a parent.

(7) "Legal dependent" means natural born and adopted minor children, spouses, special needs adult children, household members covered by a

conservatorship or guardianship, and parent's parents living in the household who are claimed on tax returns as legal dependents.

~~(8) "Long distance parenting" is defined in ARM 37.62.130.~~

(9) (8) "Other child" means a child whom a parent is legally obligated to support but who is not the subject of the child support calculation. A stepchild is not considered an other child.

~~(10) (9)~~ "Personal allowance" is defined in ARM 37.62.114.

(11) (10) "Preexisting support order" means an order entered by a tribunal of competent jurisdiction prior to the calculation or recalculation of support.

~~(12) (11)~~ "Primary child support allowance" is defined in ARM 37.62.121.

~~(13) (12)~~ "SOLA" means standard of living adjustment.

(13) (13) "Standard of living" includes the necessities, comforts, and luxuries enjoyed by either parent, the child, or both parents and the child, which are needed to maintain them in customary or proper community status or circumstances.

~~(15) "Subsequent child" is defined in ARM 37.62.146.~~

~~(16) (14)~~ "Transfer payment" is defined in ARM 37.62.136.

(15) "Underemployed" means employed less than full time, when full time work is available in the community or the local trade area, and/or earning a wage that is less than the parent has earned in the past, or is qualified to earn, when higher paying jobs are available in the community or the local trade area, for which the parent is qualified.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.106 DETERMINATION OF IMPUTED INCOME FOR CHILD

SUPPORT ~~(1) Income for child support includes actual income, imputed income, or any combination thereof which fairly reflects a parent's resources available for child support. Income can never be less than zero.~~

~~(2) Actual income includes:~~

~~(a) economic benefit from whatever source derived, except as excluded in (3) of this rule, and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, earnings, profits, dividends, severance pay, pensions, periodic distributions from retirement plans, draws or advances against earnings, interest, trust income, annuities, royalties, alimony or spousal maintenance, social security benefits, veteran's benefits, workers' compensation benefits, unemployment benefits, disability payments, earned income credit and all other government payments and benefits. A history of capital gains in excess of capital losses shall also be considered as income for child support.~~

~~(b) gross receipts minus reasonable ordinary and necessary expenses required for the production of income for those parents who receive income or benefits as the result of an ownership interest in a business or who are self-employed. Straight line depreciation for vehicles, machinery and other tangible assets may be deducted if the asset is required for the production of income. The party requesting such depreciation shall provide sufficient information to calculate the value and expected life of the asset. Internal revenue service rules apply to determine expected life of assets. Business expenses do not include deductions~~

relating to personal expenses, or expenses not required for the production of income.

~~(c) the value of non-cash benefits such as in-kind compensation, personal use of vehicle, housing, payment of personal expenses, food, utilities, etc.~~

~~(d) grants, scholarships, third party contributions and earned income received by parents engaged in a plan of economic self-improvement, including students. Financial subsidies or other payments intended to subsidize the parent's living expenses and not required to be repaid at some later date must be included in income for child support.~~

~~(e) allowances for expenses, flat rate payments or per diem received, except as offset by actual expenses. Actual expenses may be considered only to the extent a party can produce receipts or other acceptable documentation. Reimbursements of actual employment expenses may not be considered income for purposes of these rules.~~

~~(3) Income for child support does not include benefits received from means-tested veteran's benefits and means-tested public assistance programs including but not limited to the former aid to families with dependent children (AFDC), cash assistance programs funded under the federal temporary assistance to needy families (TANF) block grant, supplemental security income (SSI), food stamps, general assistance and child support payments received from other sources.~~

~~(4) For lump sum social security payments, social security benefits received by a child of the calculation as the result of a parent's disability, refer to ARM 37.62.144.~~

~~(5) In determination of a parent's income for child support, income attributable to subsequent spouses, domestic associates and other persons who are part of the parent's household is not considered. If a person with a subsequent family has income from overtime or a second job, that income is presumed to be for the use of the subsequent family, and is not included in income for child support for the purposes of determining support for a prior family.~~

~~(6) "Imputed income" means income not actually earned by a parent, but which will be attributed to the parent based on:~~

~~(a) the parent's earning potential if employed full-time;~~

~~(b) the parent's recent work history;~~

~~(c) occupational and professional qualifications;~~

~~(d) prevailing job opportunities in the community and earning levels in the community.~~

~~(7) Income should be imputed whenever a parent:~~

~~(a) is unemployed;~~

~~(b) is underemployed;~~

~~(c) fails to produce sufficient proof of income;~~

~~(d) has an unknown employment status; or~~

~~(e) is a full-time student whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is being determined, unless actual income is greater. If income to a student parent is imputed it should be determined at the parent's earning capacity based on a 40 hour work week for 13 weeks and a 20 hour work week for the remaining 39 weeks of a 12 month period. (This is an annual average of 25 hours per week.)~~

(1) It is appropriate to impute income to a parent, subject to the provisions of (5), when the parent:

- (a) is unemployed;
- (b) is underemployed;
- (c) fails to produce sufficient proof of income;
- (d) has an unknown employment status; or
- (e) is a student.

(2) In all cases where imputed income is appropriate, the amount is based on:

- (a) the parent's recent work history;
- (b) the parent's occupational and professional qualifications;
- (c) existing job opportunities and associated earning levels in the community or the local trade area. If full time work is not available, imputed income is based on the number of hours and the hourly pay that is currently available in positions for which the parent is qualified.

(3) Imputed income may be in addition to actual income and may not necessarily reflect the same rate of pay as the actual income.

(4) Income is imputed according to a parent's status as a full or part-time student, whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is determined, unless actual income is greater. If the student is:

- (a) full time, the parent's earning capacity is based on full time employment for 13 weeks and approximately half of full time employment for the remaining 39 weeks of a 12-month period; or
- (b) part-time, the parent's earning capacity is based on full time employment for a 12-month period.

~~(8) When income is imputed to a parent, federal earned income credit (EIC) should not be added to income and child care expense should not be deducted from income when the effects are offsetting.~~

~~(9) (5)~~ (5) Income should not be imputed if any of the following conditions exist:

- (a) the reasonable costs of child care for dependents in the parent's household would offset in whole or in substantial part, that parent's imputed income;
- (b) a parent is physically or mentally disabled to the extent that the parent cannot earn income;
- (c) unusual emotional and/or physical needs of a legal dependent require the parent's presence in the home; ;
- (d) the parent has made diligent efforts to find and accept suitable work or to return to customary self-employment, to no avail; or
- (e) the court or hearing officer makes a finding that other circumstances exist which make the imputation of income inequitable. However, the amount of imputed income shall be decreased only to the extent required to remove such inequity.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.108 INCOME VERIFICATION/DETERMINING ANNUAL INCOME

(1) A parent must swear to the accuracy and authenticity of all financial

information submitted for the purpose of calculating child support.

(2) Income of the parents must be documented. This may include pay stubs, employer statements, income tax returns, and profit and loss statements.

(3) To the extent possible, income for child support and expenses should be annualized to avoid the possibility of skewed application of the guidelines based on temporary or seasonal conditions. Income and expenses may be annualized using one of the two following methods:

(a) seasonal employment or fluctuating income may be averaged over a period sufficient to accurately reflect the parent's earning ability; . If a parent is self-employed, a minimum of three years of profit and loss statements and/or income tax returns for both the individual parent and the business entity are required to consider the average of the parent's income for entry to the child support worksheet; or

(b) current income or expenses may be projected when a recent increase or decrease in income is expected to continue for the foreseeable future. For example, when a student graduates and obtains permanent employment, income should be projected at the new wage.

(4) Income for child support may differ from a determination of income for tax purposes.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.110 ALLOWABLE DEDUCTIONS FROM INCOME (1) Allowable deductions from income include those required by law, those required as a condition of employment, and those necessary for the production of income. Deductions are allowed for documented annual expenses paid by one or both parents, to include:

~~(a) the amount of alimony or spousal maintenance which a parent is required to pay under a court or administrative order.~~

~~(b) an amount for the needs of all "other" children as defined in ARM 37.62.103(9), determined as follows:~~

~~(i) When establishing a child support obligation, deduct:~~

~~(A) the total of any pre-existing support orders for the other children; and~~

~~(B) an amount equal to one-half of the primary child support allowance as found in ARM 37.62.121 for the number of other children for whom no support order exists. These include children who reside with the parent as well as children who do not.~~

~~(ii) When modifying a current children support order, deduct the amount determined under ARM 37.62.146.~~

~~(c) the amount of any health insurance premium which either parent is required to pay under a court or administrative order for a child not of this calculation;~~

~~(d) the actual income tax liability based on tax returns. If no other information is available, use the tax tables which show the amount of withholding for a single person with one exemption;~~

~~(e) the actual social security (FICA plus medicare) paid;~~

(a) the total, annual out-of-pocket cost of health insurance coverage paid by either or both the parents for the parent and the parent's family if the child of the

calculation is insured under the same policy;

(b) the amount of any health insurance premium which either parent is required to pay under a court or administrative order for a child not of this calculation, unless the premium is deducted under (1)(a);

(c) the actual amount of documented, reasonable child care costs incurred by a parent for children of the calculation as a prerequisite to employment. Child care expense is not imputed when income is imputed;

(d) the current, annual amount of alimony or spousal maintenance which a parent is required to pay under a court or administrative order;

(e) an amount for the needs of all "other" children as defined in ARM 37.62.103(8). Deduct:

(i) the current, annual total of any preexisting support orders for the other children; and

(ii) an amount equal to one-half of the primary child support allowance as found in ARM 37.62.121 for the number of other children who reside with the parent for whom no support order exists;

(f) the amount of income tax withholding for a single person with one exemption according to Internal Revenue Service (IRS) and state of Montana withholding tax tables;

(g) the actual Social Security (FICA plus Medicare) paid or withheld on gross income or the amount that would be due for imputed or projected income at the current social security contribution rate;

(h) actual, documented unreimbursed expenses incurred as a condition of employment such as uniforms, tools, safety equipment, union dues, license fees, business use of personal vehicle and other occupational and business expenses;

(i) actual, documented mandatory contributions toward Internal Revenue Service (IRS) approved retirement and deferred compensation plans. Mandatory contributions are fully deductible;

(j) one-half reasonable expenses for items such as child care or in-home nursing care for the parent's legal dependents other than those for whom support is being determined, which are actually incurred and which are necessary to allow the parent to work, less federal tax credits. Do not deduct imputed child care expenses when imputing income; one-half the amount of a parent's documented payments for other children for child care expenses necessary to allow the parent to work and for extraordinary medical expenses;

(k) extraordinary medical expenses incurred by a parent to maintain that parent's health or earning capacity which are not reimbursed by insurance, employer, or other entity; and

(l) court ordered payments except as excluded under ARM 37.62.111 (nonallowable deductions);

(m) cost of tuition, books, and mandatory student fees for a parent who is a full-time student as anticipated under ARM 37.62.106(7)(e) (4) (imputed income); and

(n) the annual, documented interest expense paid by a parent on that parent's student loans.

(2) Allowable deductions from income for child support differ from allowable deductions for tax purposes.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.111 NONALLOWABLE DEDUCTIONS FROM INCOME

(1) Deductions which are not allowable under these rules include:

- (a) payroll deductions for the convenience of the parent, such as credit union payments and savings;
- (b) a net loss in the operation of a business or farm, ~~used to offset other income~~ which is not the parent's principal source of income nor is it related to the principal source of income;
- (c) investment losses ~~outside the normal course of business~~ unless the parent's principal source of income is from investments;
- (d) expenses incurred for the support of a spouse capable of self-support;
- (e) payments for satisfaction of judgments against a parent related to the purchase of property for the parent's personal use;
- (f) bankruptcy payments except to the extent that they represent debts for expenses which would otherwise be deductible; or
- (g) a stepchild and associated costs.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.114 PERSONAL ALLOWANCE

(1) Personal allowance is an amount which reflects 1.3 multiplied by the federal poverty ~~index~~ guideline for a one person household. This amount is deducted when determining child support. Personal allowance is a contribution toward, but is not intended to meet the subsistence needs of parents.

(2) Adjustments for the needs of other legal dependents of a parent are limited to those provided for in ARM 37.62.110 (allowable deductions).

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.118 TOTAL INCOME AVAILABLE/PARENTAL SHARE

(1) The parents' incomes available for child support are combined to determine the total income available for child support. Each income is divided by the total. The resulting factor determines each parent's share of the primary child support allowance under ARM 37.62.121 and ~~supplements~~ adjustments under ARM 37.62.123.

(2) For any parent whose support obligation is determined according to the provisions of ARM 37.62.126(1)(a) and (1)(b) (minimum support), the amount of the minimum contribution is substituted for that parent's total income available for child support for the purpose of determining each parent's share of the primary child support allowance and ~~supplements~~ adjustments.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.121 PRIMARY CHILD SUPPORT ALLOWANCE (1) Primary child support allowance is a standard amount to be applied toward a child's food, shelter, clothing, and related needs and is not intended to meet the needs of a particular child. This allowance is ~~.30~~ .35 multiplied by the personal allowance found at ARM 37.62.114 for the first child. For the second and third children, the personal allowance is multiplied by .20 and added for each child. For four or more children, the personal allowance is multiplied by .10 and added for each additional child.

(2) The primary child support allowance, plus or minus adjustments, is divided between the parents according to the factors determined in ARM 37.62.118(1) (total income available/parental share).

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.123 SUPPLEMENTS ADJUSTMENTS TO PRIMARY CHILD SUPPORT ALLOWANCE ~~(1) The primary child support allowance is supplemented by:~~

~~(a) reasonable child care costs incurred by a parent for children of the calculation as a prerequisite to employment. The child care expense is reduced by the federal dependent care tax credit;~~

~~(b) costs required for health insurance coverage for the children of the calculation. Include only those amounts which reflect the actual costs of covering the children; and~~

~~(c) other needs of the child as determined by the circumstances of the case, including other health related costs.~~

~~(2) The total supplemental needs of the child are divided proportionately between the parents according to the parental share determined under ARM 37.62.118.~~

~~(3) Each parent will receive credit for the amount of the supplemental needs paid by that parent.~~

(1) Because the primary child support allowance is designed to apply to all children, some individual children may have needs/expenses that are greater or less than the allowance. Upon proof of expenses and/or receipts, it may be appropriate to increase or decrease the amount of the allowance before it is divided between the parents. If a child previously enjoyed participation in an activity or organization when the parents resided together, there is a presumption in favor of including those costs in the child support calculation, if they are recurring and predictable and expected to continue into the future. The presumption may be rebutted by, among others, evidence that the cost of supporting two households leaves insufficient income to support payment of the additional costs.

(2) Increases must be an appropriate or necessary cost:

(a) for the health or special needs of the child, which may include:

(i) a child's unreimbursed medical expenses exceeding \$250 per year, which are recurring, and can reasonably be predicted. If such an increase is entered, the paying parent shall be held responsible for only his share of the expenses which

exceed the amount entered, when they are actually incurred, because the parent will already pay his share of the amount entered in each monthly child support payment;
or

- (ii) special educational programs or equipment;
- (b) which encourages the developmental growth of the child, such as:
 - (i) private school tuition; or
 - (ii) participation in extra-curricular activities; or
 - (iii) the additional cost of automobile insurance for an older child.

(3) Decreases to the primary child support allowance may include but are not limited to regular, annual receipt of funds for the child by the child's household. The amount received may be entered into the support calculations as a decrease to the primary support allowance so long as the child's additional expenses, if any, are entered as an increase to the primary child support allowance. A decrease is allowed for funds which are:

- (a) intended for the child's needs or upkeep; and
- (b) not received from a parent or other guardian; and
- (c) not social security payments based on the earning record of either parent;

and

- (d) not included in the parent's income for child support; and
- (e) not listed in [Rule II(3)] (determination of income).

(4) If a parent pays a nonparent provider for an expense added to the primary child support allowance for a child (such as private school tuition), the parent must receive credit for the payment in the calculation to produce an accurate support obligation.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.126 MINIMUM SUPPORT OBLIGATION (1) A specific minimum contribution toward child support should be ordered in all cases when the parent's income is insufficient to meet the parent's personal allowance or the parent's child support obligation is less than ~~42%~~ 14% of that parent's income after deductions.

(a) For parents whose income as defined in [Rule II] and ARM 37.62.106 after deductions, as defined in ARM 37.62.110, is insufficient to meet the parent's personal allowance, the minimum contribution is a portion of the income after deductions and is determined by applying the table in (3) as follows:

(i) divide the income after deductions by the personal allowance as defined in ARM 37.62.114 to determine the income ratio;

(ii) find the income ratio in Column A;

(iii) locate the corresponding minimum contribution multiplier in Column B;

and

(iv) multiply the income after deductions by the minimum contribution multiplier. The result is the parent's minimum contribution.

(b) For parents whose income after deductions exceeds the personal allowance, the parent's minimum contribution is ~~the greater of:~~

~~(i) the difference between income after deductions and the parent's personal allowance; or~~

(ii) ~~12%~~ 14% of income after deductions.

(2) The minimum contributions under this rule are presumptive and may be rebutted by the circumstances of a particular case, provided there is an appropriate finding on the record.

(3) The table for determining the minimum support obligation of a parent whose income after deductions is insufficient to meet the parent's personal allowance is as follows:

<u>Column A</u>		<u>Column B</u>
<u>"Income Ratio"</u>		<u>"Minimum Contribution Multiplier"</u>
<u>If the IR is in the range:</u>		<u>The minimum contribution is:</u>
over	.00 to .25 <u>.35</u>	<u>.00</u>
<u>If the IR is:</u>		
<u>over:</u>	<u>but not over:</u>	<u>minimum is:</u>
.25 .35 to	.34 .40	<u>.01</u>
.34 .40 to	.37 .45	<u>.02</u>
.37 .45 to	.43 .50	<u>.03</u>
.43 .50 to	.50 .55	<u>.04</u>
.50 .55 to	.56 .60	<u>.05</u>
.56 .60 to	.62 .65	<u>.06</u>
.62 .65 to	.68 .70	<u>.07</u>
.68 .70 to	.75	<u>.08</u>
.75 to	.84 .80	<u>.09</u>
.84 .80 to	.87 .85	<u>.10</u>
.87 .85 to	.93 .90	<u>.11</u>
.93 .90 to	1.00 .95	<u>.12</u>
.95	1.00	<u>.13</u>

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.128 INCOME AVAILABLE FOR STANDARD OF LIVING

ADJUSTMENT (SOLA) (1) The purpose of the standard of living adjustment (SOLA) is to ensure that the child enjoys, to the extent possible, the standard of living commensurate with the parent's income. If a parent has income available after deducting the personal allowance and the parent's share of the child support allowance as ~~supplemented~~ adjusted, the remaining income is subject to SOLA.

(2) ~~SOLA is calculated by subtracting from the parent's income available for support, as provided in ARM 37.62.116 the parent's share of the primary child support allowance under ARM 37.62.121 and supplements as provided in ARM 37.62.123.~~ The amount of income available for SOLA may be adjusted before determination of the standard of living adjustment. A reduction in the amount of income available at this stage of the child support calculation does not adversely affect the child's needs but reduces the amount of support owed by the parent and must be shown to be in the best interests of the child.

(3) One allowable adjustment to income available for SOLA is a portion of the cost of transportation necessary to exercise parenting time with the child of the

calculation. A dollar threshold is determined by multiplying 2,000 miles by the current year's IRS business mileage rate. The threshold amount is deducted from the total cost of transportation and the remaining balance is deducted from income available for SOLA before the SOLA factor is applied; the threshold is known as the "standard expense". The adjustment is calculated as follows:

(a) multiply the parent's annual mileage driven to exercise parenting time by the current IRS business mileage rate;

(b) add the annual cost of transportation by means other than automobile;

(c) subtract the standard expense from the total of (2)(a) and (2)(b); and

(d) subtract any difference greater than zero from the parent's income available for SOLA.

~~(3)~~ (4) If income is available for SOLA, multiply the income by the SOLA factor from the following table which corresponds to the number of children for whom support is being determined.

<u>Number of Children</u>	<u>SOLA Factor</u>
1	.14
2	.21
3	.27
4	.31
5	.35
6	.39
7	.43
8 or more	.47

~~(4)~~ (5) Income available for SOLA may not be less than zero.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.134 TOTAL MONTHLY SUPPORT AMOUNT (1) For each parent,
~~the total monthly child support amount consists of:~~

(a) the parent's share of the primary child support allowance, with supplemental needs, adjustments and credits, if any, plus the parent's standard of living adjustment; or

(b) the minimum support obligation determined under ARM 37.62.126.

(2) In setting the amount of order per child, the total monthly support should be divided equally among the children, except when it is allocated according to supplemental needs as provided in ARM 37.62.138. Each parent's total child support provides annual support for the children of the calculation. The amount of support a parent retains and the amount a parent owes to the other parent are determined by the amount of time the child spends with each parent. A parent's total child support is not the same amount as the parent's transfer payment except when the parent spends zero days with the child; the exception is addressed in ARM 37.62.136(3) (transfer payment).

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.136 TRANSFER PAYMENT (1) ~~Applying ARM 37.62.101 through 37.62.134 results in a child support obligation for each parent. If all the children of the calculation spend 110 days or less with a parent, all of that parent's obligation is due and payable to the other parent. This is the transfer payment, which may be adjusted in accordance with ARM 37.62.138.~~

(1) The amount that is owed by one parent to the other parent as support for their child, and/or is owed by one or both parents to a third party, is called the transfer payment. The transfer payment is based on the current or proposed amount of time the child spends with each parent, or third party, at the time of the child support calculation. The transfer payment is calculated by one of the following methods.

(a) If both parties parent the child at least one day (see definition at [Rule I] - parenting time) per year, the transfer payment is the difference between the parent's support amounts (as in ARM 37.62.134) after each parent has been credited with the support amount corresponding to the percentage of time the child spends with each of them. For example, if the child spends 275 days, or 75% of the year, with mother, and 90 days, or 25% of the year, with father, mother retains 75% of her support amount and owes the remaining 25% to father. Father retains 25% of his support amount and owes 75% to mother. The amounts owed are offset against each other and the parent owing the higher amount pays the difference to the parent owing the lower amount.

(b) If both parties do not parent the child at least one day per year, there is no need to offset the support amounts to determine the transfer payment. The parent with whom the child spends zero days owes that parent's total child support to the other parent.

(c) If the child lives with a third party, both parents' support obligations are payable to the third party for the percentage of time each year the child resides with the third party. The obligation to the third party is in addition to the obligation of each parent to the other, if any, and is calculated by the same method as in (1)(a) or (1)(b).

(2) To set the amount of the monthly transfer payment per child, divide the annual transfer payment by 12 and then divide the monthly transfer payment by the number of children in the calculation. The monthly per child amount is rounded to whole dollars as follows: round down for \$.01 to \$.49 and round up for \$.50 through \$.99. The total of the rounded per child amounts is the monthly transfer payment owed by one parent to the other, and/or to a third party, and, due to rounding, may not equal the monthly transfer payments shown on the worksheet.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.140 ANTICIPATED CHANGES (1) To the extent possible, child support orders must address children's changing needs as they grow and mature, in a way that minimizes the need for future modifications. When child support is determined, if any material change in current circumstances is anticipated within 18

months, separate child support calculations should be completed.

(2) In the initial calculation, present circumstances should be included. In the subsequent calculation(s), appropriate anticipated changes should be calculated. The child support order should provide that the amount(s) from the subsequent calculations will take effect the month following the anticipated changes.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.148 SUPPORT GUIDELINES TABLES/FORMS (1) The Child Support Enforcement Division (CSED) has developed a child support ~~determination~~ calculation worksheet. Copies of this worksheet may be obtained from the Department of Public Health and Human Services, Child Support Enforcement Division, P.O. Box 202943, Helena, MT 59620 or any regional office. The worksheet is also available on the department's Internet site at www.dphhs.mt.gov/forms.

(2) Included for use with the worksheet are a financial affidavit, necessary tables and information for completion of the guidelines calculation. To assure that these tables are current, the Child Support Enforcement Division will republish the ~~worksheet with~~ tables annually as soon as practical after release of information upon which tables are based. The ~~worksheet with~~ tables will be identified by the year of publication or republication.

(3) The child support guidelines worksheets, or a replica of those forms with a similar format and containing the same information, must be used in all child support ~~determinations~~ calculations under the guidelines and a copy must be attached to the support order.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.2121 ADDITIONAL HEARING PROCEDURES (1) To the extent they are not inconsistent with the provisions of this subchapter, the overall hearing procedures set forth in subchapter ~~6~~ 9 of this chapter are applicable to administrative hearings under this subchapter.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

4. The rules 37.62.130, 37.62.138, and 37.62.146 as proposed to be repealed are on pages 37-13513, 37-13522, and 37-13533 of the Administrative Rules of Montana.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

5. The Child Support Enforcement Division (CSED) of the Department of Public Health and Human Services, State of Montana, is required by both federal regulation (45 CFR 302.56) and state law (40-5-209, MCA) to review its uniform

child support guidelines at least every four years. The CSED adopted changes to the guidelines in 1998 intended to simplify the calculation and based partially on the results of a study by the University of Montana on the CSED's behalf. The study conclusion emphasized the need for simplification of the guidelines while at the same time maintaining the equity contained in the calculation, according to the results of interviews with parents, attorneys, and judges. Nevertheless, when the CSED started on the current review of the guidelines, late in 2002, the call for simplification was still strong.

Comments, suggestions, questions, and complaints about the guidelines are received every working day by the CSED from those parents who pay or receive child support and from attorneys, judges, and its own caseworkers. One of the first steps taken in the quadrennial guideline review was a CSED review of a random sample of nearly 300 child support case files from both the CSED and the district courts. Federal regulations require the case review "to ensure that their [guidelines] application results in the determination of appropriate child support award amounts". In addition to considering how the guidelines are applied, the CSED notes variances or deviations from the guidelines and searches for errors and misunderstandings of the administrative rules that constitute the guidelines.

The CSED also placed a survey regarding child support and child support guidelines on its web site early in the current guidelines review. Without funds to publicize the survey, the CSED still received approximately 375 completed questionnaires from members of the public. Responses demonstrated a strong sense of fairness regarding the imputing of income to parents for the child support calculation. Among the most interesting were responses to the question: "After the family breaks up, should the child support guidelines always require child support to be based on the highest income a parent can earn"? Only 49 respondents chose "Yes" while 299 answered "No". In addition, by a margin of two to one, the respondents strongly supported the self-support reserve in Montana's guideline and the majority favored only one guideline model of the four considered: Montana's current Melson model.

One of the most important of the proposed changes to the Montana Child Support Guidelines is a direct result of the federal charge to issue orders in the appropriate amount. The CSED has been concerned for some time about the accuracy of the federal poverty guidelines, which are the basis for the primary child support allowance or what amounts to basic child support under Montana's guidelines. Having researched the method used to determine the poverty amounts, the CSED decided it was no longer adequate by itself as a basis for child support. Further research led the CSED to a method (see Proposed Changes, below) recommended by the National Academy of Sciences for a new national poverty line. Although not charged with establishing a national poverty line, the CSED would adapt the suggested method to determine the primary support allowance in the guidelines to be at least an amount that would provide the minimum necessary to raise a child. If Montana's child support guidelines are to continue to determine adequate amounts of child support, it is necessary that the CSED's proposed changes be adopted.

Since the 1998 changes to the guidelines, there has been an important development in the calculation of child support across the country: the use of automated child support calculators, usually found on the state child support agency's Internet website. On the child support web site of family law attorney, Laura Morgan (www.supportguidelines.com), there are links suggesting at least 23 states currently have a child support calculator available to the public. The Montana CSED began receiving requests in the late '90s for the location of its child support calculator. Unable to provide one at that time, the CSED began to look for ways it could change that for the public as well as guideline practitioners, because some of those calls came from Montana attorneys and district court judges. The CSED found that simplification of the guidelines would make it easier to build a calculator and to make its instructions clear to users.

The state's summary dissolution process, passed by the Montana Legislature in the 1990s, would also benefit from a child support calculator available to the public. The process allows couples who meet eligibility requirements to file for a simplified dissolution (divorce) in district court that can be completed without the assistance of an attorney. Before the summary dissolution is filed, however, a child support order must be entered in district court and a child support order requires a worksheet calculated under the guidelines. Currently, there are two possibilities available for most couples who require a child support calculation and are unable to hire an attorney. The parents may open a case with the CSED or they can prepare the child support worksheet manually, a daunting but doable task. The need for a child support calculator available to the public is a need the CSED can meet by simplifying the calculation of child support as proposed in these rule changes.

The Montana Supreme Court made a request in, In re marriage of Kummer & Heinert, 2002 MT 168, 310 MT 470, 51 P3rd 513 (2002), that CSED provide an expanded definition of a "day" of parenting in the guidelines. In a second decision, Albrecht v. Albrecht, 2002 MT 227, 311 MT 412, 56 P3rd 339 (2002), the Supreme Court addressed the provision of business records for the purpose of calculating child support. The court held that the lower court "abused its discretion by deviation from the Guidelines' preference for a three-year average of net income for a self-employed parent". The CSED finds it necessary to change the guidelines to reflect the court's decision and to provide the expanded definition of a day of parenting requested by the court.

In recent years, parents, particularly fathers, have become more educated about guidelines and the nation has seen an increase in the number and volume of fathers' groups and other groups working to make guidelines and other child support policies fairer. In March 2000, Vicki Turetsky, writing for the Center for Legal and Social Policy ("Realistic Child Support Policies for Low Income Fathers") pointed out that research shows low income fathers find many child support policies to be unfair. One of the most difficult to deal with is the state policy for retaining child support when the children are receiving welfare payments from the state. "Just as a job is about more than a paycheck, child support also is about more than money. A father's good faith effort to pay child support carries with it symbolic meaning about

his capacity to care for and take care of his children". (Turetsky, 2000, p. 4)
Turetsky (2000, p. 2) also noted the encouraging evidence for noncustodial parents that those who pay support have more contact with their children.

Studies as far back as the 1980s have found that the "research generally shows a positive relationship between child support and visiting. Similarly, families that report problems with paying or collecting child support are also likely to report problems with visiting". (Seltzer, Judith A., "Child Support and Child Access: Experiences of Divorced and Nonmarital Families" from Oldham, J. Thomas and Marygold S. Melli, Editors, Child Support the Next Frontier, the University of Michigan Press, Ann Arbor, 2000).

A 2000 report by the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services, The Establishment of Child Support Orders for Low Income NonCustodial Parents found similar results regarding unfairness. This federal report made recommendations in five categories, many of which involve perceived unfairness by the noncustodial parent. The findings suggest that as a parent's perception of unfairness increases, the likelihood of payment decreases. For example, the report cited statistics that 14% made no payments during the study period when no retroactive support was charged, 23% made no payments when up to 12 months retroactive support was charged, and when more than 12 months' support was charged, the nonpayment rate increased again, to 34%.

The report also notes that not all low income noncustodial parents cite inability to pay as the primary reason for nonpayment of child support. Other reasons include custody and visitation disputes, where it is frequently seen as unfair that the state/federal government funds an office to enforce child support orders but has no funding available for enforcement of other parenting requirements in court orders, such as the noncustodial parent's right to visitation and state retention of child support payments made when the family receives welfare, another issue of basic fairness to noncustodial parents, previously noted.

These study results led the CSED to consider how the calculation of child support in Montana could be made fairer. One part of the Montana guidelines of possible concern to the CSED was the visitation threshold, already criticized as unfair by some noncustodial parents because it provides no credit to them until they spend more than 110 days per year parenting their children. The effect of the 110-day threshold is to exclude the noncustodial parent's cost of parenting the children for a full 30% of the year while it ignores the custodial parent's reduction in costs when the children are residing with the other parent. With increasing concern over the unfairness issue, and studies finding that the payment of child support goes hand in hand with spending more time with their children, CSED decided it was necessary to change the visitation threshold to acknowledge the cost of parenting, which may encourage noncustodial parents to spend time with their children. There are numerous studies showing that children benefit in many ways from increased time with the noncustodial parent, from better grades to higher self-esteem.

The proposed change to the method of determining the primary child support allowance will treat parents the same with regard to their liability for support whether they are "custodial" or "noncustodial". The child support calculation will consider the parenting plan to determine the noncustodial parent's obligation when the child is expected to reside with the custodial parent and the custodial parent's obligation when the child is expected to reside with the noncustodial parent.

By describing the needs identified in this notice, from the increase in the primary child support allowance to the ability of low-income parents to file for a summary dissolution in district court; from the Montana Supreme Court request to CSED to the study conclusions of unfairness; from the requests of the judiciary and the state bar for simplification to the pressing need for an online child support calculator, the Montana CSED has shown the necessity for change in the administrative rules that make up the child support guidelines. And, because the guidelines are contained in administrative rules, the CSED has no other option but to propose changes to the rules through this statutory rule change process.

To assist the reader, the CSED prepared a primer on child support guidelines and a worksheet for the proposed guideline changes in the spreadsheet computer program, Excel. Both the primer and the worksheet can be found on the CSED Internet site at www.dphhs.mt.gov/csed.

THE CURRENT REVIEW

The CSED began with a decision to articulate the goals of Montana's child support guidelines beyond the obvious desire to establish support orders adequate to meet the needs of children. Following are the most important goals identified (not necessarily in order of priority).

1. Meet the basic needs of children and prevent or reduce child poverty.
2. If income is available, provide additional resources to allow the child a higher standard of living, which allows interests to be pursued, and skills and abilities developed.
3. Allow parents to meet their own basic needs so they can maintain employment.
4. Recognize that child support should not force a parent into poverty.
5. Consider that a separated family cannot live as economically in two households as in one, due to lost economies of scale and duplication of household expenses.
6. Recognize costs incurred for parenting/visitation with the children.

Early into the guideline review, the CSED decided to expand it to consider other guideline models, including one never adopted by any state, a model called Cost Shares. Author of the original model, Donald J. Bieniewicz, and another proponent, R. Mark Rogers, both economists, have touted the benefits of the cost shares method since at least 1994 when it appeared in chapter 11 of Child Support Guidelines: The Next Generation, a collection of articles published through a contract between the American Bar Association and the federal Office of Child Support Enforcement.

Bieniewicz originally developed the guideline model as a volunteer for the Children's Rights Council. The model is unlike any other in use or proposed in that it offsets the child-related income tax benefits (up to \$5,000/year for two children), which mostly accrue to the custodial parent, against the costs of raising the child and divides the remaining balance between the parents. This feature, however, also causes the resulting obligations (as determined by CSED) to be lower than those calculated by the other guideline models and cost shares is not the model chosen by CSED.

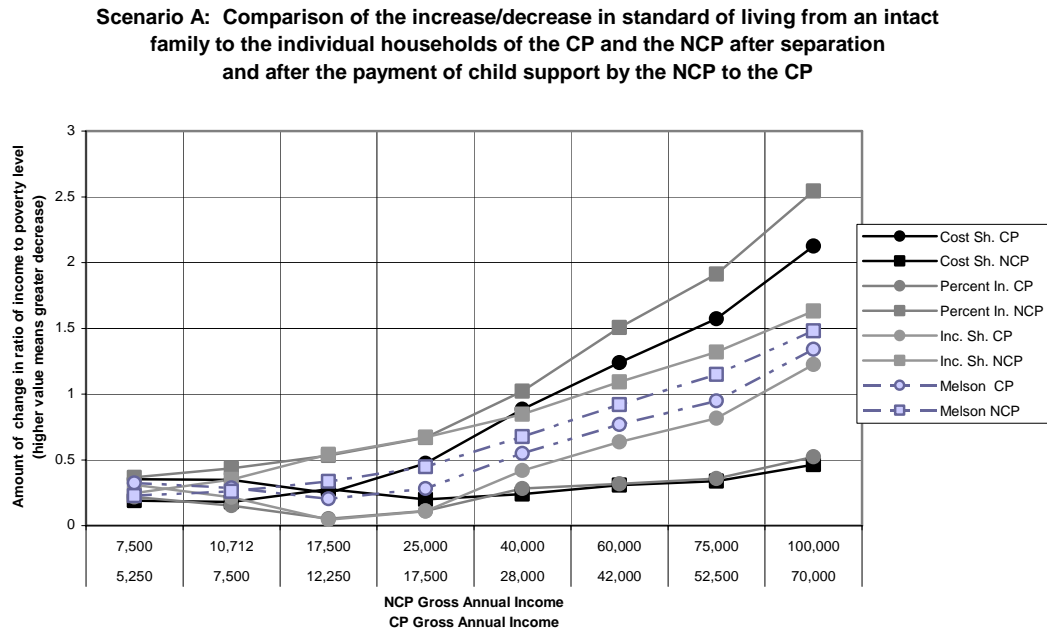
Bieniewicz and Rogers were concerned with the income shares and percent of income guideline models for the damage they do to noncustodial parents with extremely high child support awards relative to their incomes. Those support obligations sometimes maintain the custodial parent and children, at the intact family standard of living, or, occasionally even above that standard, but leave the noncustodial parent in poverty. For this phase of the guideline review, the CSED had an additional goal in mind: a guideline model that equitably distributes the inevitable decrease in the standard of living between the parties to the calculation. In other words, which model treats the parents most fairly when the standard of living falls?

Using automated worksheets, the CSED completed hundreds of calculations under the four models reviewed: Montana's Melson, Wisconsin's Percent of Income, Colorado's Income Shares, and the Cost Shares model. The Cost Shares worksheet was based on one that Rogers developed, which is available on his Internet site (www.guidelineeconomics.com). Because of the difficulty in comparing the parents' households, which are usually of different size after separation, the Federal Poverty Guidelines were used to create a format in which each party's income is standardized as a multiple of the household's poverty level. In other words, the ratio of income to poverty level is the standard of measurement.

For example, a custodial parent with two children has a 2006 poverty level for a three-person household of \$16,600 per year, while the noncustodial parent, at a household size of one, has a poverty level of \$9,800. The household poverty levels were adjusted for the fact that the children spend 75% of the year with their mother and 25% with their father. The adjustments result in a reduction in mother's poverty level to \$14,900 $[(75\% \times \$16,600) + (25\% \times \$9,800)]$ and an increase in father's poverty level to \$11,500 $[(25\% \times \$16,600) + (75\% \times \$9,800)]$.

If the custodial party's after-tax, after-child support income is three times her poverty level (\$44,700), a ratio of 3 to 1, and the noncustodial party's after-tax, after-child support income is three times his poverty level (\$34,500), also a ratio of 3 to 1, the two households are approximately equal in standard of living after the payment of taxes and child support, even though their incomes are very different. This method has been used for many years by social scientists and child support advocates to compare the effects of a particular guideline or guideline change on the resulting standard of living of the participants.

Figure 1. Comparison of Change in Standard of Living for Each Parent in Four Guideline Models



The results of the CSED's analysis are shown in Figure 1. By first determining the standard of living of the family when it was intact (total income of both parents divided by the poverty level for a household of four, which is \$20,000 for 2006), CSED created a base from which to compare the standard of living of each parent's household after separation. Because the income to poverty level ratio is the standard of measurement, Figure 1 displays the change in the ratio from intact household to each parent's household after separation. Each of the four guideline models is represented by two lines, one for custodial and one for the noncustodial parent and the closer the two lines are to each other, the closer the change in standard of living for both parties. In this analysis, the percent of income model reflects the greatest difference between the line for the custodian and the line for the noncustodial parent, followed by the cost shares model. Interestingly, it is the noncustodial parent who sees the greatest decrease in standard of living in the percent of income model, while it is the custodial parent who drops the most in the cost shares model. The guidelines model with the least distance between the parents' after-separation ratios is the Melson model, the model currently used in Montana. The proximity of the two lines indicates the parents' standards of living have been reduced approximately the same.

In addition to these factors, the CSED considered a number of other criteria before selecting the Melson guidelines as the basis for Montana's child support guidelines. Besides the standard of living comparison, the CSED rated the models' performance in relation to the goals stated above and also for complexity/simplicity. The CSED did not choose one of the other three guideline models due to the high support amounts for low-income, noncustodial parents under the income shares and percent

of income guideline models and the lower support amounts of most orders from the cost shares guideline model. The percent of income model recognizes almost no circumstances of the noncustodial party, beyond income, and does not consider the income of the custodial parent, nor does it include a self-support reserve, an important requirement for Montana's guideline. The income shares model rated higher than percent of income but still below cost shares, which was second to Melson. Although cost shares offers a new method of calculation, the resulting child support orders are low compared to the other guideline models and the CSED believes those support orders would not be acceptable to the public in Montana due to concerns about adequacy. Based on these factors, the Montana CSED is confident the Melson model continues to offer the best foundation for child support guidelines in Montana.

PHILOSOPHY

The child support guidelines were written to assist individuals in calculating a child support order based on average needs for a specific family situation. Like building codes, the guidelines provide the parameters within which decisions can be made. While everyone is required to follow the building codes when constructing a home, each individual home varies according to the income, needs, and circumstances of the family who will live there. Likewise, the guidelines provide the parameters within which child support can be determined.

The Montana child support guidelines utilize an arithmetic formula, which incorporates parents' income and deductions with a number of predetermined allowances for parents and children. Application of the formula results in an obligation for each parent, which is presumed to be adequate and reasonable and provides a standard for the majority of cases. It is also important that child support payments are consistent and timely; therefore obligations are payable monthly. The guidelines are not intended to be exact with respect to specific parents or children, nor are they intended to apply to every case without consideration of the unique circumstances that exist in all families. Each presumption within the guidelines as well as the overall determination may be rebutted when and only when extraordinary circumstances exist which can be shown to make application of the guidelines inequitable. An interpretation, which meets the best interests of the children, is required. In all cases, it is the first priority of the parents to meet the needs of the children according to the financial ability of the parents.

GUIDELINES HISTORY

Child support guidelines have been in existence only since the late 1980s, so they are still being amended and adjusted based on the experience of state child support agencies and other users. Each guideline method in use around the country must be evaluated to determine if it operates the way it was intended and if it accomplishes agency goals. Considering that early state child support agencies existed for the sole purpose of collecting child support from noncustodial parents to reimburse state and federal governments for welfare spending, the original

guidelines have evolved as the mission of the agencies has evolved. When government reimbursement was the goal, the percent of income guideline provided for higher collections as it appropriated a flat percentage of the noncustodial parent's gross income, based on the number of children to be supported.

Today, these states that adopted the percent of income guideline in the late '80s are beginning to change to other models (Georgia, Tennessee, and Minnesota, most recently, moved from percent of income to the income shares model) as noncustodial parents continue to object to a guideline that does not consider the custodial parent's income and can result in very high support orders relative to income.

As guidelines evolved, some state child support agencies gradually made changes to take into account the amount of time the children spend with the noncustodial parent. In the beginning, all children's costs were assumed to reside with the custodial parent and even when the children were in the care of the other parent, it was thought that the full child support payment must continue to the custodial parent to maintain the household for the children's return.

In Montana, the original child support guidelines adopted by the Supreme Court in 1987 were based on the income shares model developed by the Advisory Panel on Child Support Guidelines under a federal grant to the National Center for State Courts in 1986. That original guideline had a less refined method of providing for parenting-time adjustments. During the next review of the guidelines in 1991 and 1992, the CSED decided that the income shares model was not the best available for Montana's guidelines. With the assistance of Marianne Takas, of the American Bar Association, the CSED chose the Melson model to replace income shares and slightly modified the provision for the self-support reserve to take into account other income earners in the household. That first Melson guideline in Montana included a parenting time adjustment that took effect after the noncustodial parent spent more than 110 days per year parenting the children.

The next review of the guidelines began in 1995 and involved a contract with the University of Montana to gather opinions from all types of guideline users, from parents to district court judges. In addition to some specific complaints, primarily regarding the complexity of the guidelines, those Montanans interviewed agreed that the Melson model remained the fairest but needed simplification. Other survey conclusions included: respondents were not willing to give up the equity they saw in the Montana Melson guidelines; the modification to the self-support reserve calculation to consider other income-earners living in the household, made when the Melson guideline was adopted, was difficult to understand and frequently calculated incorrectly; and, there were concerns that support orders were very high for low-income parents. The guideline review concluded with a notice of rule change providing that other income-earners in the household would no longer be considered in the self-support reserve, income would no longer be attributed to nonperforming assets, and the self-support reserve was increased from 100% to 130% of the federal poverty line for a single person household, in addition to other minor changes

proposed. Members of Montana CSED's guideline committee also collaborated with Nick Bourdeau, a Montana CPA, to improve its worksheet for shared parenting.

After the current review began, the CSED distributed an in-house survey to CSED staff and placed a second survey on its Internet site for completion by any interested party, to learn more about opinions on the various aspects of child support, including guidelines. In addition, CSED regularly receives comments and suggestions about its guidelines from people who use them and people who are subject to orders based on them. It was these sources, in addition to the experience of the members of the CSED guidelines committee and the recommendations of a variety of studies by public and private organizations, that form the basis of most of the changes currently proposed to the Montana guidelines.

The Montana CSED believes there is a need to increase fairness in the child support guidelines calculation and it is fairness that makes it necessary for CSED to amend the guidelines.

PROPOSED CHANGES

Fairness and simplicity are the two cornerstones of these proposed rule changes and explain the necessity of amending the rules. As noted above, each state is responsible, by federal regulation, for setting appropriate child support orders and administrative rule changes are the only method available to Montana's CSED to comply. The guidelines must be amended from time to time to keep up with changing social values and public perceptions of child support obligations. While there are many proposed changes to the administrative rules that make up the child support guidelines, most are relatively minor and will not change support orders a great deal. Some will not affect the amount of support at all, but are necessary to clear up misunderstandings or to include new circumstances. There are changes that will have a greater effect on one party or the other although CSED has attempted to balance the changes in such a way as to mitigate those effects. Following is a summary of the proposed changes and their effects, and, following that, a rationale for each individual rule.

Proposed amendments to the guidelines would change the parents' income available for child support in a number of ways. By excluding federal tax credits from income, including the Earned Income Tax Credit, the Child Tax Credit and the Dependent Care Tax Credit, the division has simplified the calculation of support, an essential element, based on comments from inside and outside the agency. Experience has shown that keeping up with regular changes to the tax credits and tax rates by Congress and the resulting changes in worksheets by the IRS are taking increasing programming time away from CSED's other priorities. In addition, the proposed changes include deducting state and federal income taxes based on filing single with one exemption for all parents rather than use parties' actual filing status at the time of the calculation. In the past, the calculation has been driven to a significant extent by the actual filing status and number of exemptions entered, which can and does change with regularity. The CSED believes these changes are

necessary both to simplify the calculation and to remove a variable that exercises too strong an influence on the calculation.

To ensure the position of the state of Montana on parents who are not employed to support their children is clear, a specific presumption is proposed that a parent is capable of full time employment, although that could be less than 40 hours per week in some cases. The guideline policy on imputing income to parents was also rearranged to affect a change in emphasis. The change recognizes that imputing income at a level not supported by available jobs in the local community is not fair to parent or child.

As noted above, the guidelines are subject to orders and requests from Montana's Supreme Court and two of the proposed changes are a result of such. The proposed addition to ARM 37.62.108 adopts the policy of requiring a minimum of three years of tax returns or profit and loss statements from a self-employed parent as articulated by the Court in Albrecht v. Albrecht, 2002 MT 227, 311 MT. 412, 56 P3rd 339 (2002). Although this suggestion has been included in the CSED instructions for completing a child support guidelines worksheet since 1999, the guideline rules did not require it. A second case involves a specific request from the Supreme Court to CSED, contained within a case opinion, for a better guidelines definition of a "day" when children are in the temporary care of third parties, such as day care providers and schools. (In re marriage of Kummer and Heinert, 2002 MT 168, 310 MT. 470, 51 P3rd 513, (2002)). These rule changes are necessary to improve public understanding of the guidelines and to keep up with changes in case law.

Allowable deductions from income in Montana's guidelines have always been restricted to those required by law, those required as a condition of employment, and those necessary for the production of income. One proposed change will add this specific language to ARM 37.62.110, which is necessary to provide direction to parents who have potential deductions not specifically addressed in the rules. Another proposed change is to allow for deduction of the entire health insurance premium paid out-of-pocket by a parent, as long as the child of the calculation is covered by the policy, and is intended to recognize that, except for child-only policies, health insurance is a family affair and usually requires enrollment of the parent. To include the cost for the parent as well as others covered by the policy, it is necessary to move the entry point for the premium cost in the calculation because the other parent is not responsible to share any part of the premium except the child's. Rather than adding the cost to the child's primary support allowance and then dividing it between the parents, as is currently the procedure, the premium will be deducted from the income of the parent who pays it. A similar proposal also treats child care necessary for a parent to work outside the home as a deduction from income. These proposed changes will treat the children's expenses more like parents treat them, as a reduction of their income available for supporting their children's other needs.

The last change to allowable deductions from income is an addition necessary to

keep up with changes in the law and that is the cost of interest on student loans. This expense is arguably a cost of employment because of the connection between education and employment and the federal government has improved the collection of student loans to the point that parents have no choice but repayment. The loan principal is not considered income in any context and, likewise, the repayment of principal is not a reduction of income for child support.

Rule I, Determination of Parenting Time, is an entirely new rule and, is, perhaps, the proposed rule with the greatest effect on the calculation of child support. The 110-day per year visitation threshold is no longer a part of the guidelines in this proposal, and, instead, the percentage of time a parent spends parenting the child determines the percentage of the parent's child support obligation retained to spend directly on the child. This change is believed to be necessary by the CSED because it recognizes the parenting costs of the noncustodial parent, a change from the current rules, and treats parents the same. Each parent's obligation is divided into the support retained for spending directly on the child when in the parent's care and the support owed to the other parent for time periods when the child resides with the other parent. When each parent owes a part of his support obligation to the other parent, the amounts owed are offset by subtracting the lower amount from the higher amount. The parent with the higher obligation pays the difference to the parent with the lower obligation.

EXAMPLE: One child resides 75% of the time with his mother and 25% of the time with his father. Father's child support is \$400 per month and Mother's support is \$200 per month. Each parent owes the other when the child is residing with the other parent. Each parent retains the same percentage of support as the percentage of time spent parenting the child.

Father - $\$400 \times .75 = \300

$\$400 \times .25 = \100

Mother - $\$200 \times .25 = \50

$\$200 \times .75 = \150

Father retains \$100 per month (25%) to spend on the child when the child is with him. He owes the other \$300 per month (75%) to Mother. Mother retains \$150 (75%) per month to spend on the child when the child is with her. She owes the other \$50 (25%) to Father. So, Mother owes \$50 to Father and Father owes \$300 to Mother. After offset, $(\$300 - \$50 = \$250)$ Father owes \$250 per month to Mother.

Rule I also includes a default provision if the parents are unable to agree on the number of days the child spends with each of them. The provision is necessary because of the many parents who are unable or unwilling to agree on the amount of time the child spends with them. The final section of this rule gives directions for averaging the amount of time if there is more than one child, and the children spend different amounts of time with each parent.

The proposed change to the Primary Child Support Allowance, at ARM 37.62.121, is small but important. CSED research provided an in-depth look at the current federal poverty figures and the deficiencies of the poverty guidelines, which are the basis for

the support variables currently used by the guidelines. The CSED decided it was necessary to find a new method and opted to use the recommendation of a report from the National Academy of Sciences (NAS), a book called Measuring Poverty A New Approach (Citro, Constance F. and Robert T. Michael, Editors, National Academy Press, Washington, D.C. 1995). The purpose of the NAS study was to evaluate the current federal poverty thresholds and recommend a new method of determining them, if necessary.

Among the recommendations of the NAS Panel on Poverty and Family Assistance, is the following formula for a more realistic poverty threshold:

"The poverty thresholds should represent a budget for food, clothing, shelter (including utilities), and a small additional amount to allow for other needs (e.g. household supplies, personal care, nonwork-related transportation)".

The panel recommended this formula be applied to the data contained in the USDA publication "Expenditures on Children by Families", which is based on the Consumer Expenditure Survey undertaken by the Bureau of Labor Statistics of the federal Department of Labor. Because the CSED is concerned with setting the amount of Montana child support orders rather than a national poverty line, the formula was applied to the table of expenditure data for rural areas for a single child and resulted in the following calculation for 2005, the latest year for which figures are available. (Because the expenditures on children publication sums children's costs for 18 years, that figure was first divided by 18 to determine the average expenditures for a year):

Measuring Poverty A New Approach (recommendation for new poverty line adapted to poverty level for a child in Montana):

<u>Basic Costs*</u>		<u>Multiplier**</u>
Housing	\$1,795/yr	\$3,703 x 1.2 = \$4,444
Food	1,455/yr	
Clothing	<u>453/yr</u>	\$4,444 ÷ 12 = \$370/month
Total	\$3,703/yr	

* From "Expenditures on Children by Families, 2005", Table 6, published by the Center for Nutrition Policy and Promotion, U.S. Dept of Agriculture, April 2006.

** The recommendation included the addition of an amount determined by adding from 15% to 25% of the basic costs to allow for other needs; Montana used 20%.

The amount of basic support for a child, by this method, is approximately \$370 per month and is the rough equivalent of the recommended poverty level for a child. Because Montana's modified Melson guidelines are based on a minimum level of support for the child before adding more if the parents

have sufficient income, the poverty level is an appropriate place to begin for the support of the child. The CSED compared the amount generated by this method to the amount based on the method currently in use, which is 30% of the personal allowance, or \$3,822, for the first child, for 2005. If the percentage is raised to 35%, however, the result is \$4,459, which is very close to the amount derived from the National Academy of Sciences panel, at \$4,444, shown above. Considering what was learned about the problems with the current Federal Poverty Guidelines, CSED decided it was necessary to link the primary child support allowance in the Montana guidelines to a more reliable source. While the Consumer Expenditure Survey data are based on expenditures, rather than costs, it is virtually the only information available in this country that even comes close to the cost of raising children.

In past reviews, the CSED has struggled to provide answers to questions about financial circumstances that are not specifically addressed by the guidelines. One of those is the receipt of funds by the child's household that are intended for the child but come from a source other than the parents or guardians. The proposed new rule [Rule II] provides that such funds should not be included in a parent's income. In such a case, the child's needs are being met, or partially met by the additional funds, and the child's remaining needs are less than the primary child support allowance. Because of the structure of the Melson model calculation, the parent's income is first allocated to meet the child's primary child support allowance. If the parent has income remaining, a percentage is added to the parent's share of primary support. In other words, if less of the parent's income is necessary to meet the child's primary support, then more income is available for the standard of living adjustment (SOLA), which applies a percentage based on the number of children to the remaining income. Whether these outside funds are at the disposal of the child or parent or are deposited to a savings account for the child's education, for example, would determine if it is appropriate to include the funds in the calculation.

ARM 37.62.123 previously addressed the addition of children's supplemental needs (day care and health insurance, primarily) to the primary child support allowance. Because the CSED proposes to deduct those items from the income of the parent who is paying these expenses, ARM 37.62.123 has been amended to address adjustments to the primary child support allowance. Above is the CSED's rationale for adjustments that decrease the allowance and, of course, there may also be items that increase the allowance. This amended rule provides criteria which allow the user to determine if expenses of the child qualify as an increase in the allowance.

The CSED decided since the percentage by which the primary child support allowance in the guidelines is determined is being increased, that the minimum obligation must also be raised. As the income of the parents increases, the amounts of their child support obligations also increase and do so in an orderly manner. The maximum amount of minimum orders is naturally followed by the lowest of the standard or nonminimum orders. Because the lowest of the standard orders increased, the CSED proposes to increase the percentage for minimum orders from 12% to 14%. There is also a minor change to the lowest of the minimum orders

where the obligation is actually zero. These changes are necessary to maintain balance in the calculation of both standard and minimum child support orders.

ARM 37.62.128, which is the Standard of Living Adjustment (SOLA), referenced above, appears to have substantial changes in the rule, but, in fact, there is only one and it is the addition of what previously was ARM 37.62.130, Long Distance Parenting Adjustment. Because the review of cases, early in the current guidelines review, indicated this adjustment is used in very few support orders, the CSED decided to repeal the rule and combine its contents with the SOLA rule, to which it is connected in the calculation. This combination was necessary because the guidelines also allow other reductions in income available for SOLA and the long-distance parenting adjustment is now just one of those available.

The last of the significant changes to the guidelines, proposed by CSED, is amendment of the transfer payment rule at ARM 37.62.136. The amendment is similar to the new parenting time rule proposed at Rule I in that it explains the calculation of the transfer payment in terms of the number of days the children spend with each parent. This new method of determining child support orders is simpler to understand and to calculate because the method is intuitive: the percentage of the support order that a parent keeps is the same as the percentage of the year the child resides with that parent. The balance of the support order is owed to the other parent and corresponds to the percentage of time the child spends with that parent. Unfortunately, the 110-day threshold calculation is not intuitive and is more difficult to administer for that reason.

INDIVIDUAL RULE RATIONALES FOR NEW, AMENDED, AND REPEALED RULES

NEW RULES

Rule I DETERMINATION OF PARENTING TIME

This is an entirely new rule written to implement a change to the child support guidelines in which the amount of time the child spends with each parent determines the amount of each parent's support obligation that is retained and the amount that is owed to the other parent. The overall reason for this rule is to increase fairness in the guidelines by treating parents the same regarding recognition of their costs of parenting. The CSED believes that parents deserve to be treated alike and that it will increase their sense of fairness regarding the support order. As noted earlier, studies show that noncustodial parents are more likely to pay child support if they believe the order was set fairly and those more likely to pay are more likely to see their children on a regular basis. Although causation is not stated or implied, the studies found clear associations between these behaviors.

In Rule I(1) it is necessary to lay the groundwork for determining the period of time in days the child will spend with each parent, which, in turn, will determine the amount of money paid by one parent to the other, known as the transfer payment. The first

two sentences provide basic information regarding the parent's obligation and the last establishes that third-party custodians may also be owed child support from the parents based on the number of days the child resides with the third-party custodian.

Rule I(2) provides an expanded definition of a "day" for the purpose of determining how many days are spent with each parent. The Montana Supreme Court, as noted above, specifically requested that the CSED provide an enhanced definition of a "day" in the opinion for the Marriage of Kummer and Heinert, (2002 MT 168). In that case, the child spent time with a third-party service provider, such as a child care facility, and the Court held that the rule was insufficient to determine which parent should be credited with such times in determining the number of days the child spent with each parent.

Section (3) provides a requirement for documentary support of the number of days a parent claims: a parenting plan, a signed agreement between the parties, or a determination by a court. In addition, if none of these documents are present, the rule provides for the number of days to be entered for both parents. This provision is necessary for the CSED to continue its work without undue delay due to parties who cannot or will not agree to a number of days.

Section (4) provides instructions for averaging the amount of time children spend with their parents when there is more than one child and each child spends a different amount of time with the parents. This provision is necessary to accommodate families with multiple children who may each have his own schedule for residing with each parent, which is different than the other children's schedules.

RULE II DETERMINATION OF INCOME FOR CHILD SUPPORT

Due to the length of the current rule (ARM 37.62.106) regarding the determination of income for child support, the CSED proposes to split the rule into two rules. The first, Rule II, will have the name of the current rule and will cover approximately the first two-thirds of the current content. The second rule, ARM 37.62.106, will be named IMPUTED INCOME FOR CHILD SUPPORT and will cover approximately the final third of the existing rule. Following is the rationale for Rule II.

Rule II(1) provides direction in determining if a source of funds or ability to obtain funds should be counted as income, actual or imputed, in order to appropriately determine each parent's child support obligation. The CSED added a presumption that parents are capable of full time employment and that full time may be less than 40 hours per week depending on the parent's profession and the industry standard in the parent's location. This addition was necessary to make clear that full time employment could include something less than 40 hours per week. The medical profession is a good example, where many physicians' offices are open only four days a week and a 36-hour week is considered full time for a registered nurse.

The CSED deleted the reference in Rule II(2)(a) to the "earned income credit", because it is no longer counted as income for child support. This change was made

in an effort to simplify the calculation because the inclusion of tax credits and the requirements of eligibility complicate the calculation significantly. Also, most tax credits are means-tested (based on resources available) and are designed to assist a low income family, so not using them is fair and consistent with the exclusion of other means-tested types of income for consideration for child support.

The CSED deleted the word "ordinary" in (2)(b) as it was not necessary to describe expenses required for the production of income.

References to the federal earned income tax credit, the federal child tax credit, and the dependent care tax credit are added to (3), which provides a list of benefits and public assistance programs that are exempt from consideration as income for child support as provided in (2)(a).

The reference in (3) to "the former Aid to Families with Dependent Children (AFDC)" was deleted as it is obsolete because the AFDC program ended with the passage of welfare reform in the mid '90s and has been replaced by a block grant program called Temporary Assistance to Needy Families (TANF). The reference to "general assistance" was also deleted because the program was terminated many years ago.

The addition of directions regarding lump sum payments in (3) was necessary to convey the message that ordinarily they are not considered income for child support because they are not recurring. This language suggests the possibility of including the lump sum in a calculation if a way can be found around the nonrecurring nature of the payment.

Explanation was added to (4)(a), (b), and (c) on the various types of income from the Social Security Administration (SSA) and other financial subsidies, and that, if received on behalf of a child, are not income to the parent. The inclusion of the SSA title and program acronym was intended to assist guideline users in determining what type of payment is being received by a household and how to treat it in a child support calculation.

The CSED revised the explanation in (5) of how to treat overtime pay and income from a second job so that clearer direction is available regarding establishing an order and modifying an order. The requirement that overtime/second job pay be included when establishing an order is needed because, if a parent has contributed overtime/second job pay to the family's support when all resided together, it is fair that same income continues to be available to the family as long as the parent is working overtime.

If a parent begins working overtime or acquires a second job after separating from his first family and the extra income was not included in the first family's child support, that income is not available to the first family when modifying its support order. Due to the possibility that it is undeterminable if that type of income was included in the first family's support order, direction was added for that occurrence in (6). The CSED believes that this is a fair approach because it allows the child

support payer to retain this extra income for a second family if it was never part of his earnings for the first family. In this way, a parent may be able to afford a second family without reducing support to the first.

GENERAL AMENDMENTS TO RULES

1. ARM 37.62.123 is currently titled "Supplements to Primary Child Support Allowance" and is proposed to change to "Adjustments to Primary Child Support Allowance". The current rules provide for supplementing the allowance by adding day care costs, health insurance premiums, and other child-related costs and dividing the total between the parents. As part of the change to this rule and to ARM 37.62.110, Allowable Deductions from Income, the cost of day care and health insurance will be treated as deductions from income rather than as supplements to the allowance.

In addition, under the proposed change to this rule, ARM 37.62.123, increases or decreases to the allowance will be called "adjustments" instead of "supplements", which will help distinguish the new provision from the old. Throughout ARM Title 37, chapter 62, subchapter 1, the child support guidelines, there are references to "supplements", which will be changed to "adjustments", and "supplemented", which will be changed to "adjusted". References to "supplemental", or other forms of the word, "supplement", if any, are addressed in the specific changes to rules, below.

2. The word "documented" was added to a number of rule provisions for the deduction of expenses, or costs, so that proof of deductions from income can be required. Proof is necessary because parents have strong incentives to increase deductions and, thereby, decrease income available for child support.

SPECIFIC AMENDMENTS TO RULES

ARM 37.62.101 AUTHORITY, POLICY, AND PURPOSE

The minor change to ARM 37.62.101(3) this first rule of the child support guidelines, adds definition to the understanding that child support is calculated at a given point in time and does not change automatically or by any method other than a formal modification. This change is necessary to support the language in ARM 37.62.136(1), Transfer Payment, which explains the transfer payment is based on the "...amount of time the child spends with each parent, or third party, at the time of the child support calculation". This change addresses concerns about a misunderstanding that child support is somehow recalculated whenever a child spends more or less time with a parent than considered in the child support calculation. This proposed rule change is not intended to alter the fact that child support is calculated at a given point in time and must undergo modification to change the amount.

ARM 37.62.103 DEFINITIONS

The definition of terms used in the child support guidelines was revised to reflect changes in other rules. This rule provides guidance for specific definitions of terms that may differ from ordinary use outside application of the Montana Child Support Guidelines. In addition, the sections of the rule were renumbered to retain its alphabetical order in compliance with Secretary of State format requirements.

The definition of "Federal Poverty Guidelines" has been updated to reflect the appropriate federal agency and to adopt the wording suggested by the U.S. Department of Health and Human Services at its Internet web site.

The definition of "imputed income" was added to provide clarity when applying the Montana Child Support Guidelines and to distinguish this amount from any income actually earned by a parent.

The definition of "long distance parenting" is deleted as unnecessary given the proposed repeal of ARM 37.62.130, Long Distance Parenting.

The definition of "subsequent child" is deleted due to the proposed repeal of ARM 37.62.146 regarding treatment of other children in modifications of child support.

A new definition of "underemployed" is added to increase the emphasis placed on imputed income in the proposed changes. That emphasis is intended to clarify the category of parents who are employed but for fewer hours or for lower wages than the parent can earn in the present job market and resulting in lower income available for child support. It is allowable to impute income to make up the difference between actual and potential earnings only if there are jobs available for which the parent is qualified.

ARM 37.62.106 IMPUTED INCOME FOR CHILD SUPPORT

Following is the rationale for the imputed income rule, ARM 37.62.106, which is the remaining text after the rest was moved to Rule II.

The CSED found that by rearranging the provisions regarding imputing income, currently contained in (6) and (7) (determination of income), emphasis can more easily be placed on the necessity of showing that jobs for which the parent is qualified are available in the parent's local trade area when income is imputed.

Because of the necessity of showing available jobs for which the parent is qualified, imputed income may be calculated at a different rate than actual income included for child support.

The reference to "full time student" is changed to "student" as there is no reason to exclude education expenses for parents who improve their job skills by attending school part-time. The CSED determined that part-time students are presumed to work full time because typically this is what occurs. Both full time and part-time students are subject to the provision that the education or retraining will result, within

a reasonable time, in an economic benefit to the child.

The CSED changed the references to 20 and 40-hour work weeks to "full time" and "approximately half of full time" because many occupations now have standard work weeks that are less than 40 hours for full time. This is a more accurate reflection of what hours are actually being worked. The reference to annual average of 25 hours per week when imputing income for full time students was changed to full time employment for 13 weeks in the summer and approximately half of full time employment for the remaining 39 weeks of the year. This change is consistent with the change in language to full time and approximately half of full time.

ARM 37.62.108 INCOME VERIFICATION/DETERMINING ANNUAL INCOME

This rule explains the necessity of verifying income with documentation, which clearly reflects the income of the parent. This rule also explains the two methods used to annualize income and expenses.

While the instructions for completing the child support guideline worksheets include direction that income for a self employed parent should include the average of at least three years' net earnings, the administrative rules do not include such a requirement. In 2002, the Montana Supreme Court held, in Albrecht v. Albrecht (2002 MT 227), that the district court "abused its discretion by deviating from the Guidelines preference for a three-year average of net income for a self-employed parent". If parents and district court judges will be held to this standard by the Supreme Court then CSED believes there should be a clear requirement in the administrative rules that a minimum of three years' profit and loss statements and/or tax returns are required for self-employed persons for a calculation under the guidelines. Therefore CSED is adding this requirement in (3)(a).

ARM 37.62.110 ALLOWABLE DEDUCTIONS FROM INCOME

The existing provisions of (1) through (1)(d) have been deleted and new text has been inserted because the text has been rearranged in these sections as well as amended. This allows for ease of comprehension of the changes being made.

Allowable deductions from income in (1) include those required by law, those required as a condition of employment and those necessary for the production of income. This provision is necessary to provide direction to users who have questions about deductions not specifically addressed in the rule.

The total out-of-pocket cost of health insurance premiums covered in (1)(a) paid by and for the parent and the parent's family, as long as the child of the calculation is covered by the policy, is an allowable deduction because it encourages family health insurance and presents a more realistic picture of a parent's income available for child support.

Child care expenses covered in (1)(b) are now treated as an allowable deduction

from income because they are an employment-related expense of the parent and, again, this method presents a more realistic picture of a parent's available income for child support.

The need to specify in (1)(c) and (d)(i) that the deduction for alimony and child support includes only current alimony and current child support, and not arrears, is a result of the frequency of questions from parents regarding the deductibility of past due alimony and past due child support.

The proposed change in (1)(d)(ii) adds the phrase, "who reside with the parent" to provide a parent an allowance for the parent's children, who are not in the calculation, but who live with the parent. This language is also intended to disallow the "other child allowance" for children for whom the parent does not pay child support and who do not live with the parent. This change is necessary to prevent a parent from benefiting from the reduction in income for the other child allowance when the parent pays little or nothing to support the child.

Court ordered health insurance premiums for other children will continue to be allowed as a deduction unless the child is covered by the same policy as the child of the calculation, in which case the entire premium has already been allowed in (1)(a). The language in (1)(e) is necessary to prevent a duplicate deduction.

The proposed change to (f) provides that each parent is allowed a deduction from income for state and federal income taxes based on a filing status of single with one exemption, as determined by the IRS and state income tax withholding tables. This was changed in an effort to accurately reflect the status of the parents at the time of the separation or birth of the child because of the advantage or disadvantage to parents whose current filing status and exemptions may include new spouses and children. The change is also necessary because tax credits are no longer considered income for child support.

Please refer to the GENERAL CHANGES TO RULES, #2, re: "documented" at the beginning of this rationale for an explanation of the changes to (1)(h). The second change to this provision is the deletion of "and business" from the description of "other occupational and business expenses". The words are unnecessary because they add nothing to the description that "occupational" does not already cover.

Please refer to the GENERAL CHANGES TO RULES, #2, at the beginning of this rationale for an explanation of the changes in (1)(i).

The requirement in (1)(j) for child care to be reduced by the federal dependent care tax credit was deleted as the result of an effort to simplify the calculation of child support by deleting three federal tax credits, one of which is the dependent care credit. The deduction of one-half the extraordinary medical expenses for other children is a proposed new deduction because parents cannot ignore extraordinary medical expenses for their children regardless of which children they are and, again, a more realistic picture of the parent's income available for child support is

presented. The provision allowing the deduction of one-half of child care expenses for other children, as necessary for the parent to work, is currently part of the rule and is included in the new language, as well.

The term "full time student" in (1)(m) was changed to "student" to allow part-time students, as well as full time, to deduct the cost of tuition, books, and mandatory fees. The change is necessary because the deduction is currently limited to full time students and there is no reason to limit the deduction of expenses for education that is expected to benefit the child.

The proposal to add (1)(n) to allow a deduction from income for the annual amount of documented interest expense paid on the parent's student loans is due to recognition that this is an additional expense necessary for many students to attend college, where education is expected to eventually benefit the child. The CSED considered the option of including the annual principal payments on student loans as a deduction from income. However, because loan proceeds are never considered an addition to income in an accounting system, the repayment of principal cannot be considered a deduction from income. As with business loans, only the interest expense is deductible from income.

ARM 37.62.111 NONALLOWABLE DEDUCTIONS FROM INCOME

This rule distinguishes what will not be allowed as deductions from income available for child support.

Due to the difficulty guideline users have understanding (1)(b), the CSED determined that the rule's purpose was not clearly stated: when is it appropriate to allow a net loss in the operation of a business or farm to offset, or reduce, other income? The proposed change to the rule clearly states that losses in businesses that are not the parent's principal source of income are not allowed to reduce income from the principal source; related businesses may offset losses against gains and only the net gain is entered into the child support calculation. Net losses are not entered because income for child support cannot be less than zero.

The difficulty users have with (1)(c) is similar to the difficulty they have with (1)(b). The proposed change is necessary to increase understanding of how to deal with investment gains and losses in a guidelines calculation.

ARM 37.62.114 PERSONAL ALLOWANCE

The proposed change to (1) deletes a single word, "index", because the name of the Federal Poverty Guidelines no longer includes index. Because CSED must accurately name the source of information it uses in administrative rules, it is necessary to amend to correct the name.

ARM 37.62.118 TOTAL INCOME AVAILABLE/PARENTAL SHARE

Please refer to the GENERAL CHANGES TO RULES, #1, at the beginning of this rationale for an explanation of the changes to (1)(i).

ARM 37.62.121 PRIMARY CHILD SUPPORT ALLOWANCE

ARM 37.63.121(1) provides the method of setting the primary child support allowance, which is the base amount of support for raising a child. The percentage used to determine the amount has not been adjusted since adoption of this rule and the CSED determined it would be appropriate to review the use of this method. As a result, the CSED reviewed a U.S. Department of Labor publication entitled Expenditures on Children by Families. This report is broken down into seven categories of spending: housing, food, clothing, transportation, health care, child care and education, as well as a miscellaneous listing. The expenditures are incremented into three-year periods from birth to age 18.

In addition to these publications, the CSED studied a report from the National Academy of Sciences, published as a book entitled, Measuring Poverty A New Approach, which suggests the minimum amount necessary to support a family is the total of amounts spent on housing, food, and clothing plus a multiplier of this sum of .15 to .25 for the remaining expenses. It is recommended these numbers be calculated at the 30th to 35th percentile for all family expenditures, but that information is not available from the USDA publication nor can it be obtained from the federal Bureau of Labor Statistics, which conducts the Consumer Expenditure Survey (CEX), upon which it is based. Therefore, the CSED used Table 6, published by USDA for "rural" areas in its 2006 release, and selected the lowest income level of the three tables available. That level, which is \$26,800, is slightly less than Montana's average wage per job for 2004 (\$27,721), the most recent available. The next income level was over \$57,000, which would represent only a small percentage of Montanans. To more closely approximate the expenditure data for the USDA, the CSED recommended an increase from .30 to .35 of the personal allowance to determine the primary child support allowance under this rule.

Section (2) is necessary to maintain a running set of instructions for completing the calculation. Although most of the calculation remains the same as is currently in use, there are changes due to the proposed adoption, amendments, and repeal of these rules.

ARM 37.62.123 ADJUSTMENTS TO PRIMARY CHILD SUPPORT ALLOWANCE

As part of the changes proposed to this rule, the catchphrase is being changed from "Supplements To Primary Child Support Allowance" to "Adjustments To Primary Child Support Allowance". The existing language has been deleted because it dealt only with increasing the amount of the allowance. The new title's use of the word "adjustments" suggests the possibility of both increasing and decreasing the allowance, and this is exactly what was intended. Just as in the past, the primary child support allowance, after adjustments, is divided between the parents according to each parent's share of combined income.

Previously, child care expense, health insurance premiums, and other supplements to the primary child support allowance were used to increase the allowance. Child care and health insurance expenses have both been changed in (1) to deductions from income for reasons explained in those rule rationales. Only extraordinary medical expenses and other needs of the child continue to increase the allowance. In addition, the rules have been changed to allow for specific items of interest to children. For example, there is a new presumption in this rule that states, if a child was previously involved in an activity or organization when the parents resided together, it is presumed those costs will be included in the calculation. There is also a specific rebuttal named as a defense to such an addition.

Section (2) provides for increases in the allowance that are "an appropriate or necessary cost". By this phrasing, it is clear that the activities or needs of the child must be appropriate to the child's age and interests. Expenses to maintain the child's health, if they exceed \$250 per year, or to meet special needs, are included so that the parents share those costs rather than deducting them from income. Finally, this section provides for the cost of special educational programs or equipment for the child, because there are a significant number of children who need assistance of this type.

This section also includes a statement necessary to avoid the duplicate payment of expenses by the paying party. If, for example, the child has unreimbursed medical expenses of \$1450, after the \$250 threshold, the sum of \$1200 is added to the primary child support allowance. When the first \$1,450 in medical bills arrive, the paying parent is paying his monthly amount for the child's medical expenses in the monthly child support payment and is not expected to reimburse the other parent for the amount included in the calculation.

A second category of adjustments are those that encourage the developmental growth of the child, such as private school tuition, extra-curricular activities, or automobile insurance for an older child. As the language suggests, these items of expense are examples of the kind of activities or costs that may be considered in the guidelines calculation.

Section (3) addresses decreases to the primary child support allowance due to the receipt of funds by the child's household. The CSED has, over the years, taken many questions from inside and outside of CSED regarding receipt of funds that are intended for the child but do not flow from any person or other entity that is normally responsible for supporting the child. One example is Social Security Survivor's Benefits for a child from the child's stepparent, who is deceased. The child still has two parents legally required to support him, in most cases, and some will think it necessary to include the annual amount of funds received in the child support calculation. There are a substantial number of other possibilities for entries to decrease the allowance and the purpose of this section is to lay out criteria which the parent must meet in order to do so. The criteria are meant to limit the use of adjustments that decrease the allowance to those clearly outside the usual

payments of support for children.

Section (4) is necessary to obtain an accurate calculation of support by providing that, if an expense is treated as an adjustment and increases the primary support allowance, the parent who pays the expense must receive credit for payment in the calculation. Otherwise, having increased the allowance by the amount of the expense, the paying parent will pay again if not credited for the original payment.

ARM 37.62.126 MINIMUM SUPPORT OBLIGATION

This rule provides a formula by which to determine an amount of support which a parent should pay even when a parent has insufficient income to meet his share of the primary support obligation. The minimum obligation is a portion of the parent's income after deductions. The portion is determined by the ratio between income after deductions and the personal allowance.

Due to the proposed increase in the primary child support allowance (See ARM 37.62.121, above) - which sets a standard amount to be applied to a child's food, shelter, clothing, and related needs - there must also be an increase in the minimum support obligation for consistency and fairness. Currently, if the parent's income is insufficient to meet the parent's personal allowance or the parent's child support obligation is less than 12% of the parent's income after deductions, the chart to determine a minimum contribution would be used. The top percentage is 12% now and this proposal raises it to 14%. Increasing the percentages in (1) also helps to avoid a cliff or ledge effect where child support moves from the minimum contribution to child support based on the guidelines formula.

The CSED also found it necessary to simplify and clarify some language by proposing that the minimum contribution is 14% of income after deductions when the parent's income after deductions exceeds the personal allowance.

The table for determining the minimum support obligation in (3) also had to be updated with the change from 12% to 14%. In order for column B "Minimum Contribution Multiplier" to continually rise by 1% CSED added 13%, as it previously ended at 12%. This addition to column B required an adjustment to the ranges in column A "Income Ratio". The first ratio from .00 to .25 was raised to .00 to .35 and successive ratios were raised by .05 until 1.00 was reached.

The changes in this rule do not change the current method used to determine a minimum support obligation. The CSED did not identify any other alternative to accomplishing this change, although it was not for lack of discussion. The CSED recognizes the complexity added to the child support calculation by the minimum contribution requirement. However, the minimum rule is intended to protect both parents and children by requiring realistic child support obligations.

ARM 37.62.128 INCOME AVAILABLE FOR STANDARD OF LIVING ADJUSTMENT (SOLA)

This rule provides a method to determine when a parent still has income after meeting that portion of the child's primary support allowance as adjusted; there is a portion of that income to which a child should be entitled. The amount of income available for SOLA may be adjusted before determination of the standard of living adjustment.

Since its inception, the long distance parenting adjustment has always been a deduction from the amount of income available for SOLA. The committee felt it was not necessary to have a totally separate rule for this adjustment (See ARM 37.62.130, below). This rule is a more appropriate place for the Long Distance Parenting Adjustment provision from ARM 37.62.130, although it will no longer be called that, and it was added as an example of what can be adjusted.

ARM 37.62.130 LONG DISTANCE PARENTING ADJUSTMENT

The CSED determined that this rule should be repealed and adjustments for transportation expenses incurred by parents for parenting time with their minor child will be addressed in the Standard of Living Adjustment (SOLA) rule found at ARM 37.62.128. A review of a random sample of 287 case files from both the CSED and Montana district courts, in 2003, revealed that the adjustment for visitation expenses is not used a great deal in child support calculations. Rather than devote an entire rule to it, transportation costs for parenting time will be one of a number of possible adjustments to income available for the standard of living adjustment.

ARM 37.62.134 TOTAL MONTHLY SUPPORT AMOUNT

This rule is provided to explain the amount of support parents owe for the benefit of their minor children.

Subsection (1)(a) now reflects the total amount of support a parent owes for a child, including the parent's portion of the primary child support allowance after adjustments and credits are determined for that parent.

Section (2) now further explains that each parent is determined from (1)(a) to owe an annual amount of support for all the children in the calculation, and that amount is then altered depending on the amount of time each parent spends with each child. The result of this determination is the monthly transfer payment owed from one parent to the other. This rule was amended to distinguish between a parent's total child support amount and a parent's monthly transfer payment to the other parent. These amounts are never the same unless a parent spends zero days with a child.

ARM 37.62.136 TRANSFER PAYMENT

The purpose of this rule is to describe and explain the determination of the transfer payment, which is the dollar amount that changes hands between a parent and the custodian of the child. In most cases, children live with one or the other parent, or

both, but may also reside with a third party. For this reason, it is possible a parent will owe an amount of child support to the other parent and to the third party and each is called a transfer payment.

It is important to understand how the transfer payment is determined and, particularly, the fact that the total amount of a parent's child support obligation is rarely the same as the transfer payment. Both parents are responsible for supporting their children every day of the year and that support must go where the child goes. When the child resides with parent A, that parent retains the amount of support necessary to support the child for that period, plus the parent receives child support from parent B. When the child lives with parent B, that parent retains the amount of support necessary to support the child plus parent B receives support from parent A.

The only instance in which a parent's transfer payment is the same as the parent's total monthly support amount is when the parent does not spend a single "day" (as defined by the guidelines) parenting the child.

If the child resides with a third party custodian, that person may be entitled to receive child support from one or both parents. The support is calculated by the same method as for a parent except the third party custodian has no responsibility for support of the child.

Section (4) explains the method of setting the monthly transfer payment on a per child basis and provides for rounding of the obligations to the extent possible.

ARM 37.62.138 PAYMENT OF MONTHLY SUPPORT AMOUNT IN COMBINATION PARENTING ARRANGEMENTS

This rule provided a formula by which to determine the appropriate amount of payment from one parent to the other when a child spends more than 110 days with both parents. This rule is being repealed and addressed in Rule I.

A new worksheet is being developed which no longer requires a special formula to credit parents with days each has the child, therefore this rule was no longer necessary.

ARM 37.62.140 ANTICIPATED CHANGES

This rule was written to provide for an additional calculation of child support to include anticipated changes that would otherwise require modification of the order within eighteen months of creating the order. The new language was added because the CSED believed it could positively influence those preparing guideline calculations to look at the child's future for anticipated changes. By anticipating changes, the effort will save time and money and the change in child support will take place much more quickly than by modifying the support order.

ARM 37.62.146 MODIFICATIONS OF CHILD SUPPORT ORDERS

The CSED decided to repeal this rule to simplify the calculation in a modification action and to treat all a parent's children the same. This repeal eliminates the requirement of determining if the parents have a "subsequent child" and the need for two guideline calculations. In reviewing the modification cases within the Child Support Enforcement Division, in most instances, the calculation which included the subsequent child was the calculation that ultimately was used when this rule was applied. Therefore, even after repeal of the rule, it is likely the modified amounts will be very close to the amounts that resulted before repeal of the rule.

The alternative would be to keep the rule and it was determined that would cause unnecessary child support calculations to be performed.

ARM 37.62.148 SUPPORT GUIDELINES TABLES/FORMS

This rule provides for use and availability to any interested party the tables and forms developed by CSED for use in determining child support.

The CSED changed the word "determination" in (1) to "calculation" as this is how the child support calculation and worksheet are widely referred to. This change was made to other rules in the last changes to the guidelines in 1998 but this rule was missed at that time.

The reference in (2) to reprinting the worksheet every year was deleted because there is a need for only the tables to be published every year, not the worksheet.

Finally, a sentence was added to (3) to inform people that the child support worksheet is available on the department's Internet site and to provide the site address. This is necessary for convenience and easy access. The CSED did not identify any other alternative to accomplishing this change.

ARM 37.62.2121 ADDITIONAL HEARING PROCEDURES

The amendment to (1) is necessary in order to correct a typographical mistake. Subchapter 6 is reserved and the correct hearing procedure subchapter is 9. This amendment also makes the rule consistent with other administrative rules. There are no other viable alternatives to modifying ARM 37.62.2121. Because this amendment only corrects a typographical error, the number of persons affected by the changes to this rule is minimal or zero.

OVERALL FISCAL IMPACT

It is not possible to determine a cumulative fiscal impact these proposed changes will have upon those affected by the changes because any increases, decreases, or new determinations will vary depending on the numbers of child support enforcement applicants, which continually fluctuates and the individual

determinations will also fluctuate depending on individual circumstances that cannot be predicted by CSED.

6. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on November 24, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ Dawn Sliva
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State October 16, 2006.